694.

SUPREME COURT OF THE UNITED STATES.

No. 118.

JOHN C. PAIGE, PLAINTIFF IN ERROR,

vs.

MARTHA A. SESSIONS.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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J. & G. S GIDEON, printers.

JOHN C. PAIGE,
vs.
MARTHA A. SESSIONS, claimant.

Pleas before the honorable John McKinley, presiding judge of the United States circuit court, in and for the ninth circuit and southern district of Mississippi, held at the town of Jackson, at the May term, in the year of our Lord one thousand eight hundred and forty-two.

Be it remembered, that heretofore, to wit, on the 12th day of January, A. D. 1842, the following writ of fieri facias, issued from the clerk's office of the court aforesaid, to wit:

Circuit court of the United States,
Southern district of Mississippi, sct:

The President of the United States to the marshal of the southern district of Mississippi, greeting:

We command you, that of the goods and chattels, lands and tenements, of John R. Brown, James Magee, and Egbert J. Sessions, late of your district, you cause to be made the sum of twenty-two hundred and sixty-three dollars, which John C. Paige, lately in our circuit court, for the district aforesaid, has recovered against them for his damages which he has sustained by reason of the non-performance of a certain promise and assumption by the said defendants to the said John C. Paige, lately made, with interest on the said sum at eight per centum per annum, from the 22d day of November, 1841, until paid; also, the sum of thirty-eight $\frac{75}{100}$ dollars, for costs by him about his suit in that behalf expended, whereof the said defendants are convicted, as appears to us of record; and that you have the said moneys before the judges of our said court, on the first Monday of May next, to render unto the said plaintiff for his damages and costs aforesaid, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of November, A. D. one thousand eight hundred and forty-one, and in the 66th year of the independence of the United States of America.

[L. S.]

Issued the 12th day of January, 1842.

W. H. BROWN, *Clerk.*

Marshal's Return.

"Levied the within execution on the following property, on the 14th day of February, 1842, negroes Denniss, Alsey, Martha, Anthony; and also chattels—seven yoke of oxen, 1 wagon, five mules, fifteen horses, and one hundred head of cattle, as the property of Egbert J. Sessions; and a doubt arising whether the title of said property is in the said defendant, E. J. Sessions, I required of the plaintiff an indemnifying bond,

according to the statute, which is as executed with Farnham Plummer, jr., Frederick Norcom, and Eilbrek Mason, as securities, (see bond enclosed;) afterwards, on the 22d day of February, 1842, Martha A. Sessions claimed the following part of the property as her own individual property, to wit: Denniss, Alsey, Martha, and Anthony, not subject to this execution, and executed bond for the trial of right of property, with P. W. Defrance, George Richards, and Tobias Stephens, as securities, (see bond and affidavit enclosed;) whereupon I delivered the said property so claimed to said claimant, and advertised the remainder of levy, mentioned to be sold, according to law, on the twenty-first day of March, 1842, at which time the sale was postponed by request of plaintiff's attorney, (see request enclosed;) the property claimed, and bond to try the right of property given, I have appraised as follows: Denniss, to be of the value of two hundred dollars; Alsey, to be of the value of three hundred dollars; Martha, to be of the value of seven hundred dollars; and Anthony, to be of the value of eight hundred dollars.

AND. MILLER, *Marshal.*
By W. D. GORDEN, *Deputy.*

May 2*d*, 1842."

Claimant's Affidavit.

"*State of Mississippi, Warren county:*

This day personally appeared before me, John F. Pierson, commissioner for the *the* United States circuit court, southern district of Mississippi, Martha A. Sessions, who, being duly sworn, deposes and says: that Denniss, Alsey, Martha, Anthony, negro slaves, levied on by virtue of an execution in the hands of the marshal of the southern district of Mississippi, in favor of John C. Paige; and that five yoke of oxen, seventy-five head of cattle, five mules, and eight horses, levied on by virtue of the same execution, are the property of the said Martha A. Sessions, which she claims as heir at law of Russell Smith, deceased.

MARTHA A. SESSIONS.

Sworn to and subscribed before me, this 22d day of February, 1842.

JNO. F. PIERSON, *Com'r.*"

Claimant's Bond.

Know all men by these presents, that we, Martha A. Sessions, P. W. De France, and George Richards and Tobias Stephens, are held and firmly bound unto John C. Paige, in the just and full sum of four thousand dollars, lawful money of the United States, to be paid to the said John C. Paige, his executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves and each of us, our heirs, executors, and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated this the 22d day of February, in the year of our Lord eighteen hundred and forty-two.

The condition of this obligation is such, that whereas the said John C. Paige, has sued out of the circuit court of the United States for the

southern district of Mississippi, a writ of fieri facias against the goods and chattels, lands and tenements, of one Egbert J. Sessions, for the sum of two thousand two hundred and sixty-three dollars, with interest thereon from the 22d day of November, 1840, at the rate of eight per centum per annum, until paid; and the further sum of thirty-eight dollars and seventy-five cents for costs incurred thereon; which said writ, issued on the 12th day of January, in the year eighteen hundred and forty-two, and is made returnable to said court on the first Monday of May next, and which said writ is directed to the marshal of the southern district of Mississippi, who hath levied the said writ on the following named negroes, to wit: Denniss, Alsey, Martha, and Anthony; also, upon five yoke of oxen, 75 head of cattle, five mules and eight horses, as of the property, goods, and chattels of the said Egbert J. Sessions; and whereas a certain Martha A. Sessions, of the said district, who is a person not named in said execution, hath claimed the said property, and who hath, moreover, made oath of her right and title to said property, so levied upon as aforesaid; and the said marshal of said southern district, by reason of the premises, and in consequence of the execution of this bond, hath postponed the sale of said property, so claimed as aforesaid, until the next term of the court, from whence said writ of fieri facias issued, and hath delivered the said property to the said Martha A. Sessions, the claimant aforesaid; now, if the said Martha A. Sessions shall fail to pay the said John C. Paige, plaintiff in said execution, all damages that shall be assessed against her, the said Martha A. Sessions, by a jury, in case her claim shall not be sustained, or it shall appear that said claim was made for fraudulent purposes, or for delay, or if said claimant shall not well and truly deliver the said property to the said marshal, *of* the claim of said claimant should be determined against said claimant, then the above obligation to be in full force and effect, otherwise to be null and void.

MARTHA A. SESSIONS, [SEAL.]
P. W. DE FRANCE, [SEAL.]
GEO. RICHARDS, [SEAL.]
TOBIAS STEPHENS. [SEAL.]

Witness: WM. BANCKS,
T. W. TOMPKINS.

And afterwards, to wit, the circuit court of the United States, continued and held in and for the southern district of Mississippi, on the 27th day of May, in the year of our Lord one thousand eight hundred and forty-two, the said John C. Paige, the plaintiff in the execution aforesaid, by Norcom and Mason his attorneys, and says that the property levied upon by the marshal under the fi. fa. of the above entitled cause, to wit, negro slaves Denniss, Alsey, Martha, Anthony; also, the following chattels, to wit, five yoke of oxen, seventy-five head of cattle, five mules and eight horses, is the property of E. J. Sessions, the defendant in said execution, and not the property of the said Martha, the claimant, and that the same was the property of said Sessions, at the

time of the levy, and is subject to the same; and this he is ready to verify, &c., wherefore, &c.

NORCOM & MASON, *for plaintiff.*

And the claimant comes and says, that the said property levied on as above, was not the property of the said Egbert Sessions, at the time of the levy of said execution; and this she prays may be enquired of by the country, &c.

PRENTISS, GUION & SMEDES, *for claimant.*

And now at this time, to wit, at a circuit court of the United States, continued and held as aforesaid, on the third day of June, in the year of our Lord one thousand eight hundred and forty-two, being the day and year of first herein written, came the parties aforesaid by their respective attorneys, and a jury being called to try the issue aforesaid between the said parties, came, to wit: A. Stillman, J. Kittrell, H. Keating, Donald McNabb, George H. Ish, E. Newman, G. W. Clark, John C. Klind, R. P. Winslow, Lewis Reno, Edmund Richardson and John L. McManus, who being empannelled, tried and sworn, the truth to speak upon the issue joined, say upon their oaths, that the negro slaves Denniss, Alsey, Martha and Anthony, also, five yoke of oxen, seventy five head of cattle, and eight horses, levied on by virtue of the plaintiff's execution herein against E. J. Sessions, and claimed herein by *by* the said Martha A. Sessions, are not subject to satisfy said execution, but are the property of the said Martha A. Sessions, as in pleading above she hath alleged.

Bill of exceptions filed by the plaintiffs.

Be it remembered, that this cause coming on to be tried before the honorable John McKinley, upon the issue joined between the parties, the plaintiff read to the jury a transcript of the record in the case of the present plaintiff against John R. Brown, James Magee and Egbert J. Sessions, which record is in the words and figures following, to wit:

JOHN C. PAIGE,
vs.
J. R. BROWN, et al.

Pleas before the honorable Samuel J. Gholson, district judge of the United States, at a circuit court of the United States, in and for the ninth circuit and southern district of Mississippi, held at the town of Jackson, at the November term, in the year of our Lord, one thousand eight hundred and forty-one.

Be it remembered, that heretofore, to wit, on the 14th day of March, A. D. 1840, the following writ of summons ad respondendum, issued out of the clerk's office of the court aforesaid, in words and figures, to wit:

United States of America, southern district of Mississippi, ss.

The President of the United States to the marshall of the southern district of Mississippi, greeting:

We command you without delay, to summon John R. Brown, James

Magee and Egbert J. Sessions, citizens of the State of Mississippi, that they be and appear at the circuit [court] of the United States, to be held at the city of Jackson, in and for the southern district of Mississippi, on the first Monday of May next, to answer to John C. Paige, a citizen of the State of Massachusetts, of a plea of trespass on the case to his damage four thousand dollars, and that they do file their plea or defence, with the clerk of said court, on or before the meeting of the same, or judgment will be given against them by default, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the 14th day of March, A. D. [SEAL.] 1840, and in the 64th year of the independence of the United States.

WM. BURNS, *clerk.*

Marshal's return.

Executed 31st March, 1840, on E. J. Sessions.

WM. M. GWIN, *marshal,*
Per E. H. GREER, *deputy.*

April 9th, 1840, executed on John R. Brown and James Magee.

WM. M. GWIN, *marshal,*
Pr. R. A. WATKINSON, *deputy.*

And on the said 14th day of March, A. D. 1840, the said plaintiff, by his attorneys (Norcom & Mason) filed his declaration herein against the said defendants, in the words and figures following, to wit:

United States of America, southern district of Mississippi, ss.

United States Court, May Term, 1840.

John C. Page, who is a citizen of the State of Massachusetts, complains of John R. Brown, James Magee and Egbert J. Sessions, who are all citizens of *of* the State of Mississippi, in custody, &c., of a plea of trespass on the case upon promises: for that, whereas the said defendants, by the name of J. R. Brown, Jas. Magee and E. J. Sessions, heretofore, to wit, on the 9th day of May, in the year of our Lord one thousand eight hundred and thirty-eight, at Warrenton, to wit, in the district aforesaid, made their certain promissory note, in writing, bearing date the day and year aforesaid, and then and there delivered the said promissory note to the said plaintiff, and thereby then and there promised to pay, on the first day of February, eighteen hundred and forty, (after the date of said promissory note) to the said plaintiff or order, by the name of John C. Paige, esq., president, the sum of two thousand dollars and cents, for value received, payable at the Commercial and Railroad Bank, Vicksburg, Mississippi; by means whereof, the said defendants then and there became liable to pay to the said plaintiff the said sum of money in the said promissory note specified, according to the tenor and effect of said note; and being so liable, they, the said defendants, in consideration thereof, afterwards, to wit, on the day

and year aforesaid, at the district aforesaid, undertook, and then and there faithfully promised the said plaintiffs, to pay them the said sum of money in the said note specified, according to the tenor and effect thereof.

Yet the said defendants, not regarding their said several promises and undertakings, have not as yet paid the said plaintiffs the said several sums of money, or any or either of them, or any part thereof, (although often requested so to do); but to pay the same, or any part thereof, to the said plaintiffs, the said defendants have hitherto wholly failed and refused, and still do refuse so to do, to the damage of the said plaintiffs of four thousand dollars; and therefore they bring this suit, &c.

NORCOM & MASON.
Plaintiff's attorney.

Copy of note sued on.

$2,000. WARRENTON, *May* 9th, 1838.

On the first day of February, eighteen hundred and forty, we, or either of us, promise to pay to John C. Paige, esq., president, or order, two thousand dollars, for value received; negotiable and payable at the Commercial and Railroad Bank, Vicksburg, Mississippi.

J. R. BROWN, *principal.*
JAMES MAGEE, *surety.*
E. J. SESSIONS, *surety.*

May 4th, 1840.

And now, at this day, came the within named defendants and defend, &c., when, where, &c., and say actio non; because they say they did not promise in manner and form as the said plaintiff has declared, and of this they put themselves upon the country; wherefore, &c.

MOTT, *att'y for deft's.*

And afterwards, to wit, at the said November term of the court aforesaid, to wit, on the twenty-second day of November, in the year of our Lord one thousand eight hundred and forty, and until which time this cause was regularly continued, came the parties aforesaid by their respective attorneys, and a jury being called came, to wit, Lewis S. Evans, William Morter, Samuel Swanson, Miles Hardy, G. A. Pickett, Daniel McMillon, D. E. Smoot, David Hamilton, George Finucam, Thomas Gordon, Wm. S. Phillips, S. Mallam; who being empannelled, tried, and sworn to speak the truth concerning the matter within contained, say upon their oaths, that the said defendants did promise, in manner and form as the said plaintiff has declared; and they assess the damages, by reason of the premises, to two thousand two hundred and sixty-three dollars: therefore, it is considered by the court, that the said John C. Paige, plaintiff, recover against the said J. R. Brown, Jas. Magee and E. J. Sessions, the said sum of two thousand two hundred and sixty-three dollars for his damages by the jurors in form aforesaid assessed, and also the costs and charges by him about his suit in this behalf expended. And the said defendants, in mercy, &c.

The plaintiffs then read to the jury the fieri facias, in the words and figures following, to wit, (see fieri facias before copied.) The plaintiff then read to the jury the levy of the marshal, endorsed on said fieri facias, which is in the words and figures following, to wit, (see marshal's return before copied.)

The plaintiff then read to the jury the statement of N. G. Watts, which is in the words and figures following, to wit:

N. G. Watts, deputy marshal, makes oath that the property levied upon under the fi. fa. in this case, was, at the time of seizure, on the plantation where the defendant E. J. Sessions and family resides, and which plantation was under cultivation by him. He further makes oath that the value of particular property was and is what was estimated and set forth in the return on the fi. fa.

N. G. WATTS.

Subscribed and sworn to before the undersigned this 23d day of May, A. D. 1842.

R. BARNETT, *J. P.*

We agree that the above affidavit shall be read on the trial of the above cause.

F. NORCOM, GUION,
PRENTISS & SMEDES,
for claimants.

The plaintiff then closed his case for the present. The claimant's counsel then read to the jury the late will and testament of Russell Smith, deceased, which is in the words and figures following, to wit:

Probate court, July term, 1836.

The State of Mississippi, Warren county, ss.

In the name of God, amen.

I, Russell Smith, of the county of Warren, and State of Mississippi, being in my usual health, and of sound mind and memory, but calling to mind that all men have to die, do hereby make, publish, and declare this to be my last will and testament, hereby revoking all others.

1st. My soul I will to God who gave it, with a firm hope of its resurrection at the last day, and my body to be buryed in a christian-like manner, between my two dear departed companions in the grave yard on my plantation.

2ndly. I will that all my just debts and funeral expences be paid; and for this purpose, that the force be kept together on my said plantation, Sylvan vale, and prudently managed until this crop, or the subsequent one, yields a fund to pay the said debts; and should it become necessary for my executors, hereafter to be named, to borrow any money for the adjustment of the business, they may proceed, under the directions of the orphan's court, to negotiate with some bank for a loan which shall be binding on my said estate under such order.

3dly. I give and bequeath unto my dear beloved step-son, William

D. Griffin, the following described real and personal estate, to wit: All that quarter section of land patented to William Whitefield, assignee of William Lewis, and by the said William Whitefield sold and conveyed to Francis Hartley, and by the said Francis Hartley sold and conveyed to Mark Anderson, and by the said Mark Anderson sold and conveyed to me. Also, one other quarter section adjoining the aforesaid quarter on the west, entered in the name of John G. Jones, and by the said Jones sold and conveyed to me. Also, the quarter section on which my dwelling stands; half of which was confirmed to the reps. of John Hyland, and by him sold to me, the other half entered in my own name. Also, one other quarter adjoining the last mentioned one on the north, entered by Nathaniel Hoggett, and by him sold and conveyed to me, containing by computation six hundred and forty acres. Also, the following slaves: Bob Foster, his wife Harrite, and their five children, Mary Ann, Eli, Celia, Cinthia and Charles; Dilsey, the wife of Isaac, a boy, the property of the said William D. Griffin; Israel and his wife Matilda, and their child Lucinda, the wife of Edmund; which property is to be delivered to the said William D. Griffin, by my executors, when he shall arive at the age of twenty-one years; and should the said William D. Griffin die before he arives at the said age of twenty-one years, then, and in that event, the aforesaid property, real and personal, is to be equally divided between my dear beloved brothers-in-law, E. J. Sessions, P. W. Defrance, W. L. Defrance and Charles A. Defrance, provided they be living; if not, then it is to revert to my estate again, to be disposed of as hereinafter provided.

4thly. I give and bequeath unto my dear beloved daughter, Martha Ann Smith, all the remaining ballance of my estate, real and personal, not mentioned in my bequest to William D. Griffin; and should he and the others before mentioned, to whom the said legacy was to descend, all be dead, she is also to inherit it, the said legacy to W. D. Griffin; but at all events the property is to be kept together, and the force worked on the plantation, until my said daughter, Martha Ann, arives at the age of eighteen years; at which time my executors are to deliver over to her all of the property first set apart for her, and still retain the possession of the legacy to W. D. Griffin, and not deliver it to her, if he lives until he is twenty-one years of age; and if *the dies*, the mode is pointed out for them to persue; further, all the proceeds of the crops from time to are to be laid out in likely young slaves: Provided, however, in no case, are my executors to give more than two thousand dollars a pair for likely young men and women, except for mechanics. But should my said daughter, Martha Ann, die before she arives at the age of eighteen, or has an heir of her own body, then the legacy left her, *is* also that may descend to her from the first legacy, to William D. Griffin, is to be disposed of as follows, to wit: my slaves are to be fitted out with three new suits of clothes, one year's provisions, and one hundred dollars in cash, to be delivered to them after the vessel is ready to sail from New Orleans for Liberia, where they are to go and enjoy perfect liberty: provided the colonization society will take charge of them,

and they wish to go. But should they refuse to go, my executors are to allow them to select any person they wish as a master or masters, and then to such master or masters for such sums as five disinterested persons appointed by the orphan's court will say they are worth. My said executors are, at all events, after the deaths contemplated, or under this will the time arrives to render my people their freedom, to sell to the highest bidder all my real estate, on one to six year's credit, equal annual instalments, by taking from the purchaser, or purchasers, notes payable and negotiable in some good bank, with endorser and mortgage on the property sold, with a specific understanding that, if the money is not punctually paid as it falls due, they are to pay 10 per cent. interest from the date of the sale; and as fast as the money arises from said sale shall be collected, it shall be vested in some good bank stock under the direction of the orphan's court of this county, only the dividend to be expended in any way; and if the slaves should be sold, the proceeds of sale to be vested in like manner, and the stock stand for the dividend, to be applied as follows, (to wit:) five thousand, or the dividend on that amount to be given annually or semi-annually, to Melinda Gilleck, an orphan girl and cousin to me. Also, fifteen thousand dollars of stock to the contemplated Warren county academy, at Oak Ridge. Also, fifteen thousand dollars of stock to the direction of the quarterly meeting conference of Warren county, to be laid out to the best advantage in educating the poor children of this county. And the whole of the ballance of the stock or estate, in any way, to be equally divided between the Mississippi Methodist Annual Conference and the Methodist's Book Concern at New York; but no part of the principal is to be used whereby it will be diminished; but the dividends may be expended by them in any way they may direct.

5thly. I will that, in order that this my last will and testament be faithfully executed, I do hereby constitute and appoint my dear beloved brothers-in-law, E. J. Sessions, J. W. Defrance, and my trusty friends and confidents, John Lane and George Selser, executors to this my last will and testament, hereby enjoining on them the observance of the strict letter of it, inasmuch as I do here strenuously desire to impress on my said executors, as well as the orphan's court, the great aversion I have to any of my own sisters or their husbands, or any of their descendants, my brother Hiram, his wife, or any of his descendants, having any thing to do in the management of my dear daughter, or any part of my estate; and I therefore direct that, in the event of the death or refusal to act of my said executors, that the orphan's court do prudently select some individual to take the management of the same, not to be in any way related to me by consanguinity, except it be my dear beloved daughter, or her descendant, provided she be of age.

6thly. I will the guardianship of my said daughter, Martha Ann, to my said trusty friend John Lane, with the privilege annually to call on my said executors, or if he be acting himself, for a sufficient sum of money to support and educate her, he directing her education to be a classic one; and, in the event of the death of the said John Lane, or his

refusal to act, the court in appointing a guardian are to be governed by the clause first above directing the manner of selecting an administrator; so that none of my relations have any thing to do with my estate or child in the remotest degree. R. SMITH, [SEAL.]

Attest, HENRY FERNANDIS,
Attest, TOBIAS STEPHENS.

The State of Mississippi, Warren county, ss:

I, Elbridge G. Walker, clerk of the probate court of said county, do hereby certify, that the foregoing instrument of writing is a true copy from the original on file in my office.

Given under my hand and seal of office, at Vicksburg, this 27th day [L. S.] of July, 1836.

Teste, E. G. WALKER, *Clk.*
By CHAS. SHELDON, *D. C.*

The claimant then proved that said claimant is the daughter of said Russell Smith, and the same person described in the will as Martha A. Smith; that Russell Smith died in June, 1836; that the property levied on is the same devised and bequeathed to the claimant under said will. The claimant then introduced the record of the probate court of Warren county, in the words and figures following, to wit:

Be it remembered that, on Monday, the 25th day of July, being the fourth Monday in said month, a probate court for the county of Warren was commenced and held at the court-house thereof, in the city of Vicksburg.

Present, William Mills, esq'r, judge, E. W. Morris, sh'ff, E. G. Walker, clk.

Among the record and proceedings of said court are the following, to wit:

A writing, purporting to be the last will and testament of Russell Smith, deceased, was produced in open court, and proved according to law by the oath of Henry Fernandis, a subscribing witness thereto, and admitted to probate; whereupon, on motion of Egbert J. Sessions, John Lane, and George Selser, three of the executors therein named, letters testamentary were granted them on their entering into three several bonds, with security, in the penalty of one hundred thousand dollars each; and thereupon they qualified according *according* to law; and, on motion of said executors, it is ordered that Thomas J. Gwin, Joseph Templeton, Jesser Evans, Alex. McNiell, and Joel Hullum, be appointed appraisors of said estate; afterwards, to wit, at the August term of said court, are the following, to wit: an inventory and appraisement of the estate of Russell Smith, deceased, was returned into court, which was examined, allowed, and ordered to record.

Which said inventory and appraisement referred to is in the words and figures following, to wit:

State of Mississippi, Warren county, ss:

We, Alexander McNiell, Joseph Templeton, and Jesse Evans, and Joel Hullum do swear that we will well and truly, without partiality or

prejudice, value and appraise the goods, chattels, and personal estate of Russell Smith, deceased, so far as the same shall come to our sight and knowledge, and will in all respects perform our duties as appraisers, to the best of our skill and knowledge, so help us God.

JOS. TEMPLETON,
JESSER EVANS,
ALEX. McNIELL,
JOEL HULLUM.

Sworn to and subscribed before me, this 22d day of August, 1836.
JAS. N. BITNER, *J. P.*

In obedience to the annexed order, the undersigned have out the inventory and appraisement of the personal estate of Russell Smith, dec'd, as shewn to us by the executors, to wit:

1 set. of vols. Rev'd John Westley's works	$14 00	
1 set Malt Brun's Geography	24 00	
1 set Rollin's Ancient History	8 00	
1 vol. Westley's Notes on the Bible	2 00	
1 set Clark's Commentaries on the Bible	18 00	
1 vol. Dick's Philosophy on Religion	1 00	
1 vol. Dick's of Future State	1 00	
1 set Pailey's works	1 00	
1 vol. Hind's Farrier	50	
1 lot sundry miscellaneous works	15 00	
		$84 50
1 secretary and book case	75 00	
1 sofa	75 00	
1 rocking chair	15 00	
1½ doz. rush bottom chairs 20	30 00	
1 side board	50 00	
1 bureau and book case	30 00	
1 set match tables	20 00	
2 drawing tables, a 7 00	14 00	
1 gilt mantle glass	18 00	
1 set brass hand irons, fender, shovel and tongues	30 00	
1 do. do. do. do. do. do. do.	25 00	
1 lot glass ware and castor	20 00	
		402 00
1 set flower pots	3 00	
1 pr. brass candlesticks and glass lamp	2 00	
6 tea boards	4 00	
1 set dining and dessert knives and forks	10 00	
1 candle stand	2 00	
1 lot crockery ware and 3 glass jars	12 00	
1 Mitchell's map, with book of reference	15 00	
1 8-day clock	50 00	
1 lot kitchen furniture, castors, &c.	30 00	
2 large carpets, a $50 ea.	100 00	
2 hearth rugs, a $5 00 ea.	10 00	
1 Spanish saddle and bridle	20 00	
1 small dressing table	2 50	
2 wash stands at a $3 ea.	6 00	
		266 50
1 lot of bed clothing, consisting of quilts, blankets, sheets, pillows, towels, counterpains, &c.	100 00	
4 bedsteads, beds and furniture, &c., a $50 ea.	200 00	
1 bedstead and feather bed	20 00	
		320 00
		$1,073 00

INVENTORY—Continued.

1 box Muscat wine	$7 00	
1 rifle gun	15 00	
1 double barrel short gun	30 00	
1 pr. pistols	5 00	
1 ewer and basin and 2 pitchers	3 00	
1 pr. saddle bags	3 00	
		$63 00
Stock.		
120 head of cattle at 7 00	840 00	
8 yoke work cattle, a $60	480 00	
46 head of sheep, a $3 00	138 00	
3 sorrel horses, a $40 ea.	120 00	
1 white horse	75 00	
1 dunn filley	40 00	
1 grey mare	50 00	
1 sorrel mare and colt	75 00	
1 sorrel mare	100 00	
		1,918 00
1 brown mare	40 00	
1 bay mare	50 00	
1 dunn horse	100 00	
1 bay horse	100 00	
1 sorrel horse	60 00	
1 old sorrel horse	45 00	
1 sorrel horse	80 00	
1 sorrel mare	50 00	
1 grey horse	100 00	
1 old iron grey horse	50 00	
1 bay horse	100 00	
1 old bald horse	50 00	
		825 00
1 sorrel poney	70 00	
1 bay horse	75 00	
1 black horse	40 00	
1 old horse (Sam)	40 00	
1 bay mare and colt	100 00	
1 roan poney	30 00	
14 sets plough harness, 2 ea.	28 00	
1 old clock	15 00	
1 medical chest and medicines	25 00	
		423 00
1 old cupboard	5 00	
20 ploughs, a 3 00 ea.	60 00	
4 harrows, $1 ea.	4 00	
1 dray	40 00	
1 waggon $160, 1 do. $120 00	280 00	
1 cart $20, 12 cane hoes a $1, 12 00	32 00	
10 weeding hoes $5 00, 15 chopping axes $15	20 00	
2 chests of carpenter's tools a $60	120 00	
		561 00
		$4,863 00
1 saw $3 00, 4 spades $3 00	6 00	
1 lot of log and coupling chains	8 00	
1 pr. patent balances	10 00	
1 pr. steelyards 2 50, 1 lot blacksmith's tools 20	22 50	
		46 50

INVENTORY—Continued.

	Slaves.			
Dinah and her infant	$950 } family	1	–	$1,100 00
Martha	150 }			
Alcey and her child Rachel	–	–	–	200 00
Sally and her infant	$1,000 00 } Do.	–	–	1,200 00
Jerry her son	200 00 }			
Moses and Polley his wife	–	–	–	3,000 00
Reuben 1,300 }	–	–	–	2,500 00
Augustus 1,200 }				
Allen $1,200				
Martha 600				
Mary 600 } Family	–	–	–	3,350 00
Clinton 550				
John 400				
Louis $1,300 } Do.	–	–	–	2,250 00
Matilda and infant 950 }				
Jupiter $800 } Do.	–	–	–	1,200 00
Henry 400 }				
Bob Porter 1,000				
Harriet and infant 800				
Marquam 800				
Eli 500 } Do.	–	–	–	3,750 00
Celia 300				
Cynthia 200				
Charles 150				
Zacheriah – –	–	–	–	1,000 00
Ampey $1,200 }	–	–	–	2,150 00
Manerva and infant 950 }				
Miles 1,300				
Mariah and infant 1,000 } Do.	–	–	–	2,700 00
Offel 400 }				
America 1,000				
Rosana and infant 800 } Do.	–	–	–	2,600 00
Will 600				
Sarah 200				
Henry Clay –	–	–	1,200 00	
Nelley –	–	–	300 00	1,500 00
Bob (old man) 600				
Lucy 800				
Hall 800 } Do.	–	–	–	2,450 00
Ben 250				
				35,859 50
Israel 800 }	–	–	–	1,700 00
Matilda and infant 900 }				
Mary – –	–	–	800 00	
Delsey – –	–	–	900 00	
Mary – –	–	–	600 00	2,300 00
John $1,200 }	–	–	–	2,000 00
Harriet 800 }				
Sam – –	–	–	1,300 00	
Anthony – –	–	–	1,300 00	
Daniel – –	–	–	1,300 00	
Robert – –	–	–	1,000 00	
Lucinda – –	–	–	900 00	
Daphney – –	–	–	800 00	6,600 00
Bill 500				
Hannah 400				
Anderson 500 }	–	–	–	2,000 00
Hanna 400				
Louisa 200				
		Amt.	–	$50,459 50

Given under our hands, this 22d day of August, 1836.

JOS. TEMPLETON, [L. S.]
JOEL HULLUM, [L. S.]
JESSER EVANS, [L. S.]
ALEX. McNEILL. [L. S.]

Afterwards, to wit, at the November term, A. D. 1840, of said court, are the following, to wit: the executors of Russell Smith, dec'd, having advertised according to law for final settlement and allowance of their accounts as executors aforesaid, this day presented said account, which was received, examined, allowed, and ordered to be recorded, and on their motion, it is ordered that they be discharged from further accounting with this court, unless hereafter cited by parties interested.

Letters granted George Selser.

The State of Mississippi, Warren county, ss:

By the probate court of said county to George Selser and Stephen Howard, greeting:

Whereas Russel Smith, late of said county, deceased, had whilst he lived, [and] at the time of his death, divers goods, rights, and credits within the county and State aforesaid, and did make and publish his last will and testament, and thereby constituted and appointed the said George Selser executor thereof; and whereas, also, the said last will and testament has this day been admitted to probate in our said court, and the said George Selser has taken the oath, and given bond as required by law, we do, therefore, grant unto the said George Selser these our letters testamentary, authorising and empowering him to make an inventory of the estate of said testator, cause the same to be appraised, and make return of said inventory and appraisement into our said court, as by law required, to pay; first, the debts of said testator, and then the legacies contained in said will, as far as his goods, chattels, and credits will extend; and the law shall charge you to execute and perform the said last will and testament according to the true intent and meaning thereof; and, lastly, to render a just and true account of his actings and doings herein, when thereto required by this court.

Witness William Mills, judge of probate [court] of the county of Warren, the fourth Monday of July, in the year of our Lord one thousand eight hundred and thirty-six.

Issued the day of July, 1836, by E. G. Walker, cl'k.

C. SHELDON, *D. C.*

Letters granted to John Lane.

The State of Mississippi, Warren county, ss:

By the probate court of said county, to John Lane and William Vick, greeting:

Whereas, Russell Smith, late of said county deceased, had whilst he lived, [and] at the time of his death, divers goods, rights and credits, within the county and State aforesaid, and did make and publish his last will and testa-

ment, and thereby constituted and appointed the said John Lane, executor thereof; and whereas, the said last will and testament has this day been admitted to probate in our said court, and the said John Lane has taken the oath and given bond as required by law, we do therefore hereby grant unto the said John Lane, these our letters testamentary, authorising and empowering him to make an inventory of the estate of the said testator, cause the same to be appraised, and make return of said inventory and appraisement into our said court as by law required; to pay, first, the debts of said testator, and then the legacies contained in said will, so far as his goods, chattels and credits will extend, and the law shall charge you to execute and perform the said last will and testament according to the true intent and meaning thereof; and, lastly, to render a just and true account of his actings and doings herein, when thereto required by this said court.

Witness William Mills, judge of probate of the county of Warren, the fourth Monday of July, in the year of our Lord one thou-
[SEAL.] sand eight hundred and thirty-six.

Issued the 26th day of July, 1836.

Test:

E. G. WALKER, *clerk*,
By CHA'S SHELDON, *D. C.*

Letters granted to Egbert J. Sessions.

The State of Mississippi, Warren county, ss:

By the probate [court] of said county, to Egbert J. Sessions and John Glass, greeting:

Whereas, Russell Smith of said county, deceased, had, whilst he lived at the time of his death, divers goods, rights and credits, within the county and State aforesaid, and did make and publish his last will and testament, and thereby constituted and appointed the said Egbert J. Sessions, executor thereof; and whereas, also, the said last will and testament has this day been admitted to probate, in our said court; and the said Egbert J. Sessions, *and* has taken the oath, and given bond as required by law; we do therefore hereby grant unto the said Egbert J. Sessions these our letters testamentary, authorising and empowering him to make an inventory of the estate of said testator, cause the same to be appraised, and make return of said inventory and appraisement into our said court, as by law required; to pay first, the debts, of said testator, and then the legacies contained in said will, so far as his goods, chattels, and credits will extend, and the law shall charge; to execute and perform the said last will and testament, according to the true intent and meaning thereof; and, lastly, to render a just and true account of his actings and doings herein, when thereto required by this court.

Witness, William Mills, judge of probate of the county of Warren, the fourth Monday of July, in the year of our Lord one thousand eight hundred and thirty-six.

Issued the day of July, 1836.

Test,

E. G. WALKER, *clerk.*
By C. S., D. C.

The State of Mississippi, Warren county, ss:

I, Alfred H. Rowlett, clerk of the probate court of said county, do hereby certify, that the foregoing orders of court, to wit, admitting to probate the last will and testament of Russell Smith, deceased, and the granting of letters testamentary, and the inventory and appraisement, and the order receiving final account of executors, also a copy of the letters testamentary issued to George Selser, John Lane, and Egbert J. Sessions, have all been correctly copied from the records in my office.

Given under my hand and seal of office, this 15th day of February, [L. S.] A. D. 1842.

A. H. ROWLETT, *Clerk.*

The claimant then introduced John Lane, one of the executors, whose competency was objected to by the plaintiff, but permitted to testify by the court; said witness testified that Egbert J. Sessions, one of the defendants in the above named fieri facias, had acted as executor from the time he qualified as such, in conjunction with the two other executors; that Egbert J. Sessions had taken charge of the plantation and slaves as executor, and had since had the actual control and management thereof. That the possessions of Sessions was joint with the other executors, and the control of the slaves was given to him by the other executors as a matter of convenience, as he, Sessions, lived on the adjoining plantation.

The witness further testified that the estate of Russell Smith was unsettled, and that there are now outstanding debts against the estate of Russell Smith unpaid, amounting to upwards of twenty thousand dollars. Witness further testified that the accounts of the affairs of the estate had been kept and rendered mostly by Egbert J. Sessions, the witness, Lane, having made but two annual settlements. Witness stated that he had rendered accounts as guardian of claimant Martha A. Sessions. Witness further stated that he considered Egbert J. Sessions in the possession of the property, in the capacity of executor of Russell Smith. That the claimant and Egbert J. Sessions had intermarried in 1838; that said Sessions has been in possession of the property since the marriage; that no formal act of delivery of the property to E. J. Sessions by the executors had taken place since the marriage of the claimant with said Sessions. The defendant then read the record of the probate court of Warren county, appointing John Lane guardian of claimant, which is in the words and figures following, to wit:

Be it remembered, that on Monday, the 25th day of July, being the fourth Monday of said month, a probate court for the county of Warren, was commenced and held at the court house thereof, in the city of Vicksburg.

Present, William Mills, esq., judge, E. G. Walker, clerk, E. W. Morris, sheriff.

Among the records and proceedings of said court are the following, to wit: On application of John Lane, it is ordered by the court that he be confirmed guardian of Martha Ann Smith, a minor, heir of Russell

Smith, deceased, upon his executing bond in the penal sum of fifteen thousand dollars, with William Vick his security. Whereupon he entered into bond, and took the oath prescribed by law, and letters issued accordingly.

The State of Mississippi, Warren county, ss:

I, Alfred H. Rowlett, clerk of the probate court of said county, do hereby certify, that the foregoing order, appointing John Lane guardian of Martha Ann Smith, has been correctly copied from the records in my office.

Given under my hand and seal of office, this 15th day of February, [L. S.] A. D. 1842.

A. H. ROWLETT, *Clerk.*

After the reading of said record, the claimant closed her case. The plaintiff then proved that the claimant was now about 20 years of age; he then read to the jury a record of the probate court of Warren county, in the words and figures following, to wit:

Be it remembered that, on Monday, the 23d day of November, 1840, that being the 4th Monday of said month, a probate court was commenced and held in and for the county of Warren, in the State of Mississippi, at the court house of said county, in the city of Vicksburg.

Present, the honorable B. Springer, judge, E. W. Morriss, sheriff, H. M. Jenkins, clerk.

Among the record and proceedings of said court (it being Thursday the 6th day of said month, and the 4th day of said term,) are the following, to wit:

The executors of Russell Smith, deceased, having advertised, according to law, for final settlement and allowance of their accounts, as executors aforesaid, this day presented said account, which was received, examined, allowed, and ordered to be recorded; and on their motion, it is ordered, that they be discharged from further accounting with this court, unless hereafter cited by parties interested; which said final account is in the words and figures following, to wit:

DR. *Estate of Russell Smith, dec'd, in account current and for final settlement and allowance with Egbert J. Sessions, ex'or.*

Voucher 1	Pd. Biggs, Lacost & Co., (by renewal in part) -	$12,626 12		
2	Pd. Bank of Vicksburg - - - -	2,504 60		
3	Pd. N. & J. Dick & Co. - - - -	211 83		
4	Pd. Brabston & Jones - - - -	16 07		
6	Pd. Roner, Asher & Co. - - - -	61 31		
			$15,419 93	
7	Pd. Kipp & Seymour - - - -	20 00		
8	Pd. Templeton, Payne & Co. - - -	169 39		
9	Pd. G. W. McElrath - - - -	105 00		
10	Pd. James Magee - - - - -	122 00		
11	Pd. Templeton, Payne & Co. - - -	316 53		
12	Pd. Burk, Watt & Co. - - - -	670 00		
13	Pd. Mississippi Union Bank, (renewal in part) -	1,539 99		
			2,942 91	

ACCOUNT—Continued.

Voucher 14	Pd. N. & J. Dick & Co.	$1,300 07	
15	Pd. J. B. & S. S. Fox	3 50	
16	Pd. J. C. Bull & Co.	120 29	
17	Pd. Valentines	122 57	
18	Pd. J. Templeton & Co.	394 51	
19	Pd. Grinwold & Popes	225 00	
20	Pd. Thomas Marshall	131 00	
21	Pd. D. D. Gibson	80 00	
			$1,212 93
22	Pd. Planter's Bank, (renewal)	205 90	
23	Pd. Hiram Smith	500 00	
24	Pd. Randolph & George	165 87	
25	Pd. Kipp & Seymore	12 00	
26	Pd. Execution	883 05	
27	Pd. Harrison, Swiney & Co.	601 37	
28	Pd. Sims & Reading	28 00	
29	Pd. C. Hudson	9 00	
			4,258 29
30	Pd. Chas. Henton	13 00	
31	Pd. F. L. Webb	170 00	
32	Pd. Wm. Hay	422 36	
33	Pd. B. W. & Co.	160 08	
			664 44
34	Pd. Commercial & Railroad Bank, (by renewal in part)	14,527 40	
35	Pd. Ely & Higingbottle	68 12	
36	Pd. Valentines	100 00	
37	Pd. Steele, Jenkins & Co.	47 48	
38	Pd. J. Henderson & Co.	103 50	
			14,846 20
			$39,345 70

Cr.

Voucher 1	By proceeds 12 bales cotton	$363 38	
2	" " 69 do do	2,267 64	
3	" " 50 do do	2,463 20	
	By amount forward	5,094 22	
	To amount forward	–	39,345 70

Cr.

Voucher 4	To proceeds 30 bales cotton	678 71	
6	" do 97 do do	4,216 58	
5	" my note to Est.	558 12	
7	" 20 bales cotton	494 81	
8	" 20 do do	564 04	
9	" 26 do do	607 31	
10	" 24 do do	739 47	
11	" 12 do do	275 02	
	To amt. due in settlement of J. Lane	417 84	
			$13,636 12

Settled by me as above, as one of the executors of Russell Smith.
E. J. SESSIONS.

Nov. 26th, 1840.

The State of Mississippi, Warren county, ss:

I, Alfred H. Rowlet, clerk of the probate court of said county, do hereby certify, that the foregoing order of court, receiving the final account of the executor of the last will and testament of Russell Smith, deceased, together with said final account, have been correctly copied from the records of my office.

[L. S.] Given under my hand and seal of office, this 30th day of May, A. D. 1842.

A. H. ROWLE'TT, *Clk.*

The plaintiff also read to the jury the mortgage to the Planter's Bank, in the words and figures following, to wit:

This indenture, made and entered into this twenty-first day of January, in the year of our Lord one thousand eight hundred and forty, between Egbert J. Sessions and Martha A. Sessions his wife, of the county of Warren, and State of Mississippi, of the first part, and the president, directors, and company of the Planter's Bank of the State of Mississippi, of the second part, witnesseth: that the said Egbert J. Sessions and Martha A. Sessions his wife, for and in consideration of the sum of ten dollars, to them in hand paid by the said parties of the second part, at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and for the further consideration hereinafter expressed, have this day given, granted, bargained, and sold, and do by these presents give, grant, bargain, and sell, to the said president, directors, and company of the Planter's Bank of the State of Mississippi, their successors in office, and assigns, the following tracts or parcels of land, lying and being in the county of Warren and State of Mississippi, and known and designated on the plat of the surveys of the United States as fractional section number twenty-eight, of township number fifteen, of range three east, containing three hundred and four acres, being the same land patented to Nathaniel Hozzatt, on the fourth day of September, eighteen hundred and thirty-four, together with all the appurtenances to the above described land belonging and appertaining; to have and to hold the above described land and premises to the said parties of the second part, their successors in office, and assigns, in fee simple, forever. Also, the following negro slaves for life, to wit: Americus, aged about thirty years; Will, aged about thirteen years; Littleton, aged about nine years; Lewis, aged about twenty-eight years; Dick, aged about twenty years; Sam, aged about eighteen years; Anthony, aged about twenty years; Rosena, aged about thirty years; Matilda, aged about twenty-four; and Mary, aged about fourteen; and the said parties of the first part, for themselves, their heirs, executors, and administrators, hereby covenant and agree, to and with the said parties of the second part, their successors in office, and assigns, that they will, and their heirs, executors, and administrators shall, forever warrant and defend the title to the before conveyed land and premises, and to the said slaves, against the claim or claims of all persons whomsoever, both at law and equity.

Now, the condition of the foregoing conveyance is such, that whereas

the said Egbert J. Sessions is justly indebted to the said parties of the second part, in the sum of seven thousand one hundred and twenty-one dollars and twenty cents, as evidenced by his promissory note for the said sum of seven thousand one hundred and twenty-one dollars and twenty cents, bearing even date with these presents, to wit, on the twenty-first day of January, in the year eighteen hundred and forty, and payable twelve months after date, to the said parties of the second part, at their office at Vicksburg.

Now, should the said Egbert J. Sessions well and truly pay to the said parties of the second part as aforesaid, or their successors and assigns, on the twenty-first day of January, in the year eighteen hundred and forty-one, the one-fourth part of the said sum of seven thousand one hundred and twenty-one dollars and twenty cents, to wit, the sum of one thousand seven hundred and eighty dollars and thirty cents, together with the interest for twelve months on the balance then due; and on the twenty-first day of January, in the year one thousand eight hundred and forty-two, shall pay as aforesaid, to the said parties of the second part, their successors in office, or assigns, the like sum of one thousand seven hundred and eighty dollars and thirty cents, being the one-fourth part of said first named sum of seven thousand one hundred and twenty-one dollars and twenty cents, together with the interest for twelve months on the balance then due; and shall so continue to pay on the twenty-first day of January, in each and every year, the one-fourth part of the said original sum as aforesaid, with the interest for twelve months on the balance then due, until, by four annual payments, the whole sum shall be liquidated and discharged, then this conveyance to be null and void, otherwise to remain in full force and virtue. It is covenanted and agreed further, that the said Egbert J. Sessions shall retain the possession of the said property by this deed conveyed, and receive and appropriate to his own uses the profits, rents, and issues arising therefrom, until required to foreclose this mortgage for default in some one of the payments aforesaid, or the whole thereof.

In testimony whereof, the parties of the first part have hereunto set their hands and seals, and the said parties of the second part, by the hand of William Vick, president of their office, at Vicksburg, and the seal of their said bank, at Vicksburg, Mississippi, on the day and year aforesaid. The words "default in" were interlined before the signing, sealing, and delivery of these presents, tenth line, 2d page.

E. J. SESSIONS, [SEAL.]
MARTHA A. SESSIONS, [SEAL.]
[SEAL.] WM. VICK, *President*, [SEAL.]

STATE OF MISSISSIPPI, *Warren county:*

This day, before me, John Crawford, a justice of the peace, in and for said county, came Egbert J. Sessions, and Martha A. Sessions his wife, who severally acknowledged that they had signed, sealed, and delivered the foregoing deed as their act and deed, and for the purposes therein set forth, and the day and year therein mentioned, and that the said Martha

A. Sessions being by me examined separate and apart from her husband privately, acknowledged, that she had freely and voluntarily signed, sealed, and delivered the same on the day therein named, without any threat, fear, or compulsion on the part of her said husband.

Given under my hand and seal, this fourth day of February, 1840.

JOHN CRAWFORD, *J. P.* [SEAL.]

STATE OF MISSISSIPPI, *Warren county, ss:*

Personally appeared before me, John F. Pierson, a justice of the peace for the county aforesaid, William Vick, president, named in the foregoing deed, who acknowledged that he had signed, sealed, and delivered the foregoing deed on the day and year therein mentioned, as his act and deed.

Given under my hand and seal, this 5th day of February, 1840.

JOHN F. PIERSON, *J. P.* [SEAL.]

THE STATE OF MISSISSIPPI, *Warren county, ss:*

I, Harvey M. Jenkins, clerk of the probate court of said county, do hereby certify, that the foregoing deed and certificates were filed for record in my office, on the 10th of February, 1840; whereupon, I have made the same of record in Book O, pages 339 and 340.

Given under my hand and seal of office, this 25th day of April, 1840.

[SEAL.] H. M. JENKINS, *Clerk.*

THE STATE OF MISSISSIPPI, *Warren county, ss:*

I, Alfred H. Rowlett, clerk of the probate court of said county, do hereby certify, that the foregoing deed and certificates have been correctly copied from Book O, pages 339 and 340, of the record of deeds in my office.

[L. S.] Given under my hand and seal of office, this 1st day of June, A. D. 1842.

A. H. ROWLETT, *Clerk.*

He also read to the jury a mortgage, in the words following, to wit:

STATE OF MISSISSIPPI, *Warren county:*

This indenture, made and entered into this sixteenth day of January, eighteen hundred and forty, between Egbert J. Sessions and Martha A. Sessions his wife, of the first part, and the President, Directors, and Company of the Commercial and Railroad Bank of Vicksburg, of the second part, witnesseth: That for and in consideration of the sum of ten dollars, by the party of the second part paid to Egbert J. and Martha A. Sessions, the receipt of which is hereby acknowledged; and for the further consideration hereinafter named, the said party of the first part hath bargained, sold, and conveyed unto the parties of the second part, the following real and personal property, lying and being within the county and State aforesaid, to wit: All that certain tract or parcel of land, known as fractional section thirty-seven, in township number fifteen, of range number three east, containing five hundred and twenty-five acres and ninety-nine hundredths of an acre. Also, the following described negro slaves, to wit:

Allen, Alsey, Mary, Martha, Clementina, John, Rachel, Zachariah, Sally, Perry, McDowell, Ampy, Jupiter, Lucy, Hal and Ben; and to hold unto the said parties of the second part, and their successors in office, and their assigns, forever: and the said Egbert J. and Martha A. Sessions, hereby covenant and agree, to and with the parties of the second part, that they will, and their heirs forever shall, defend the title to the above land and negroes in fee simple, against the claims of all persons whatsoever. Now, the condition of the above conveyance is such, that whereas the said Egbert J. Sessions is justly indebted to the parties of the second part in the sum of twenty-one thousand six hundred and sixty-one dollars and nineteen cents, as evidenced by his promissory note, bearing even date with these presents, payable twelve months after date thereof; now, if the said Egbert J. Sessions shall well and truly pay to the said parties of the second part, the aforesaid sum of twenty-one thousand and six hundred and sixty-one dollars and nineteen cents, on the seventeenth day of January, eighteen hundred and forty-one, then this conveyance to be null and void, otherwise to remain in full force and virtue. And it is further covenanted and agreed by the parties hereto, that if the said Sessions shall well and truly pay, on the seventeenth day of January, 1841, the full sum of four thousand three hundred and thirty-three dollars and twenty-four cents, to the parties of the second part; and shall, in like manner, that is on the 17th day of January, 1842, 1843, 1844 and 1845, of each and every year, pay the further sum of four thousand three hundred and thirty-three dollars and twenty-four cents, together with all the legal interest accruing thereon, which said several sums make, in the aggregate, the amount of note as above specified, then the said parties of the second part agree therewith to be content and satisfied; and it is further understood, that the parties of the second part are not to proceed at law on said note, or foreclose this mortgage, unless default be made by him, the said Egbert J. Sessions, in some one of the payments aforesaid. It is further understood by the parties hereto, that the said Egbert J. Sessions shall retain the possession of the above mentioned land and negroes, and appropriate to his own use the rents and profits arising therefrom, until default be made in the payment of some one of the instalments thereof.

In testimony whereof, the said parties have hereunto set their hands and affixed their seals at Vicksburg, the day and date aforesaid, and the said parties of the second part, by the hand and seal of W. H. Benton, their president.

E. J. SESSIONS, [SEAL.]
MARTHA A. SESSIONS, [SEAL.]
W. H. BENTON, *Pres't.* [SEAL.]

State of Mississippi, Warren county:

This day before me, John Crawford, a justice of the peace, in and for said county and State, came in person Egbert J. Sessions, and Martha A. Sessions his wife, who severally acknowledged, that they had signed, sealed, and delivered the foregoing deed on the day and year

therein stated, as their act and deed. And the said Martha A. wife of said E. J. Sessions, having been by me privately examined, separate and apart from her said husband, acknowledged that *that* she voluntarily had signed, sealed, and delivered the same as her act and deed, freely, and without the threats, fear, or compulsion, of her said husband.

Given under my hand and seal, this 17th day of January, 1840.

JOHN CRAWFORD, *J. P.* [SEAL.]

State of Mississippi, Warren county:

Personally appeared before the undersigned, justice of the peace in and for said county, W. H. Benton, who acknowledged that he had signed, sealed, and delivered the within deed on the day and year therein written, as his act and deed.

Given under my hand and seal, the 17th day of January, 1840.

EDWARD R. WARREN, *J. P.* [SEAL.]

The State of Mississippi, Warren county, ss:

J. Harvey M. Jenkins, clerk of the probate court of said county, do hereby certify, that the foregoing deed and certificate were filed for record in my office, on the 17th January, 1840, whereupon I have made the same of record in book O, pages 257 and 258.

Given under my hand and seal of office, this 28th day of March, 1840.

[SEAL.]

H. M. JENKINS, *Clk.*

The State of Mississippi, Warren county, ss:

I, Alfred H. Rowlett, clerk of the probate court of said county, do hereby certify, that the foregoing mortgage and certificates have been correctly copied from book O, pages 257 and 258, of the records of deeds in my office.

Given under my hand and seal of office, this 31st day of May, A. D. 1842.

[SEAL]

A. H. ROWLETT, *Clk.*

The plaintiff proved that claimant was now about twenty years of age, and was 16 years of age at the time of her marriage with said Egbert J. Sessions, which was in September, 1838. The plaintiff proved by John Lane, that he assented to the execution of the two mortgages above named, by Sessions and wife, the present claimant. The claimant then proved, that the debts enumerated in said mortgages before referred to, were, as he believed, in renewal of debts contracted with the bank mortgages, by Russell Smith, in his lifetime, the claimant's father. Said John Lane further proved, that he was a director in one of the banks, to which said mortgages are made; that he had assisted Sessions in making the arrangement with the banks, and also assented, that he, Sessions, and claimant, should mortgage the property to the bank: this was all the proof in the cause.

And thereupon the court instructed the jury, "that the property devised and bequeathed by the will of Russell Smith to the claimant, Martha A., did not vest in her, nor was she entitled to, the possession of it,

until she, the claimant, arrived at 18 years of age; and although she married the defendant in the execution, before that time, the title to the property could not be vested in him, until the claimant attained 18 years of age, at which time under the will she became entitled to the possession of it; that the property in controversy is a chose in action, and could not vest in her husband, until he or she had reduced it to possession, which could not be done by the terms of the will before she was 18 years of age. If, therefore, when the act of the Mississippi Legislature securing to married women their property, free from the debts of their husbands, (which went into effect in April, 1839,) the claimant had not attained the age of 18 years, *the* husband had no legal estate in it, and it could not be subject to this execution; and if they believed from the evidence, that the possession held by Egbert J. Sessions, one of the defendants in the execution, was held as executor up to that time, jointly with the other executors, such possession vested in him no legal interest, by his marriage with the claimant, either to the land or slaves, or other personal property.

To which instructions of the court the plaintiff excepted, and tendered this bill of exceptions at the time, before the jury left the bar, which he prayed might be signed, sealed, enrolled, and made a part of the record, which is done accordingly.

J. McKINLEY. [SEAL.]

Therefore it is considered by the court that the said claimant, Martha A. Sessions, the claimant aforesaid, go hence without day, and recover against the said plaintiffs her costs and charges by her about her defence in this behalf expended.

Circuit court, U. S.

United States of America, southern district of Mississippi.

I, William H. Brown, clerk of said court, do hereby certify, that the foregoing forty-three pages, and what is contained on this one, contain a full, true, and complete transcript of the record of the judgment in the case therein named, as the same now remains of record in my office.

In testimony whereof, I have hereunto set my hand and affixed [L. S.] the seal of said court, at Jackson, this 14th day of January, A. D. 1843.

W. H. BROWN, *clerk.*

United States of America, ss.

The President of the United States, to the judges of the circuit court of the United States for the southern district of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between John C. Paige, plaintiff, and Martha A. Sessions, claimant, defendant, a manifest error hath happened, to the great damage of the said John C. Paige, the plaintiff aforesaid, as by his complaint appears: